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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No. 2:02-cr-00674-JCM (NJK)
)	
Plaintiff,)	
)	
v.)	RESPONSE TO DEFENDANT
)	WAN FAN KUANG'S
)	SENTENCING MEMORANDUM
XU CHAOFAN)	AND ORDER
(also known as YAT FAI HUI),)	
XU GUOJUN)	
(also known as KIT SHUN HUI),)	
KUANG WAN FANG)	
(also known as WENDY KUANG),)	
and)	
YING YI YU,)	
Defendants.)	

The United States of America, through counsel undersigned, hereby responds to the Sentencing Memorandum filed by defendant Wan Fan Kuang on June 14, 2017 [ECF 931]. The United States concurs with the statements of defense counsel regarding defendant Kuang's immigration status, and has no objection to defense counsel's request to stay the re-sentencing of defendant Kuang until such time as she is present in the United States. Alternatively, the United States requests that the Court dismiss the restitution claim against defendant Kuang without

1 prejudice. Should the Court determine that dismissal is inappropriate, the United States has no
2 objection to defense counsel's request to telephonically appear at the hearing currently scheduled on
3 August 14, 2017, or at another time convenient to Court and counsel. A draft order of dismissal is
4 attached for the convenience of the Court.

5
6 Dated: June 28, 2017.

Respectfully submitted,

7 STEVEN W. MYHRE
Acting United States Attorney

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9 DAVID JAFFE
Acting Chief, Organized Crime &
10 Gang Section

11 /s/ Marty Woelfle
12 MARTY WOELFLE
Trial Attorney

13
14 Attorneys for Plaintiff
UNITED STATES OF AMERICA

1 **MEMORANDUM**

2 Defendant Wan Fang Kuang was convicted of racketeering conspiracy, conspiracy to
3 transport stolen funds, conspiracy to commit money laundering, and passport fraud, and was initially
4 sentenced to eight years in prison on May 6, 2009 [ECF 754]. Defendant Kuang was also sentenced
5 to 3 years of supervised release, and joint and several liability for restitution of \$482,000,000.00.
6 After appeal and remand, the District Court imposed the same sentence, but reduced the amount of
7 restitution to \$7,813,905.75 [ECF 890].
8

9 Defendant Kuang, who obtained U.S. citizenship through fraud, was de-naturalized on
10 February 24, 2010. The defendant was found to be subject to removal from the United States in June
11 of 2011, and her motion to reconsider was denied in August of 2011. Defendant Kuang filed a motion
12 to reconsider, claiming that her counsel was ineffective. That motion was denied on September 28,
13 2011.
14

15 Defendant Kuang was deported from the United States to the People's Republic of China on
16 September 23, 2015. The Government has been informed by the Chinese Embassy that defendant
17 Kuang is in custody in China. Under Title 8, U.S.C. § 1182, defendant Kuang is an inadmissible alien
18 who is not eligible to return to the United States. The United States has no intention of seeking
19 defendant Kuang's return to the U.S. under any present circumstances.
20

21 Defendant Kuang has completed her sentence, including supervised release. The United States
22 does not seek any additional incarceration in defendant Kuang's case. However, defendant Kuang
23 does remain jointly and severally liable for restitution to the Bank of China, as the Court may impose
24 at re-sentencing.
25

26 Defendant Kuang cannot be present at the sentencing hearing in this case. Defendant Kuang
27 has not voluntarily waived her right to be present at sentencing, as provided for in Fed.R.Crim.Pro.
28

1 43. Therefore, defendant Kuang cannot be re-sentenced *in absentia*. Given this impossibility, the
2 United States requests the Court to dismiss the restitution claim against defendant Kuang without
3 prejudice.

4 The United States has considered seeking a waiver of the defendant's presence at the
5 sentencing hearing, but the likelihood of being able to contact the defendant, assure confidential
6 communications between the defendant and her counsel, and obtain a knowing and voluntarily
7 waiver from the defendant is very remote. Additionally, even if a waiver were obtained and
8 restitution ordered, the costs of executing any restitution order against the defendant would likely
9 outweigh any possible recovery. Therefore, the United States will not seek a waiver from the
10 defendant.
11

12 Because the defendant cannot and will not be present in the United States to appear in this
13 case, now or in the foreseeable future, the United States requests that the Court dismiss the claim for
14 restitution in this matter against the defendant, Wan Fan Kuang. However, because the United States
15 cannot predict how circumstances may change in the future, the Government requests that the
16 dismissal be without prejudice.
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18 The United States has no objection to defense counsel's request to appear telephonically for
19 whatever hearing the Court deems necessary.
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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2017, the foregoing was filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mario D. Valencia
Law Office of Mario D. Valencia
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Counsel for defendant YU Ying Yi

/s/ Marty Woelfle
Trial Attorney
Organized Crime & Gang Section

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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
6

* * *

7 UNITED STATES OF AMERICA,

Case No. 2:02-CR-674 JCM (NJK)

8
9 Plaintiff,

ORDER

10 v.

11 WAN FAN KUANG, et. al.,

12
13 Defendants.
14

15 Presently before the Court is defendant Wan Fan Kuang's unopposed request to indefinitely
16 stay the re-sentencing of the defendant in this matter (ECF 931), and the Government's response
17 (ECF 937) alternatively requesting that the matter be dismissed without prejudice.
18

19 Defendant Kuang was convicted of RICO Conspiracy, Money Laundering Conspiracy,
20 Conspiracy to Transport Stolen Monies and Passport Fraud on August 29, 2008 (ECF 675).
21 Defendant Kuang was sentenced to eight years in prison, three years of supervised release, and
22 restitution by this Court on May 6, 2009 (ECF 754), and on remand on January 15, 2015 (ECF 890).
23 The defendant's sentence has again been vacated by the Ninth Circuit, and re-sentencing is currently
24 scheduled for August 14, 2017.
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1 The defendant has completed her prison sentence and supervised release. The United States is
2 not seeking any additional incarceration or fine on re-sentencing. Therefore, the only matter
3 remaining to be determined is the defendant's liability for restitution to the Bank of China.

4 Defendant Kuang was denaturalized on February 10, 2010, and deported to China on
5 September 23, 2015, prior to the Mandate in this case being issued by the Ninth Circuit (DktEntry
6 115, Dec. 30, 2016). As a result of her criminal convictions and de-naturalization, the defendant is an
7 inadmissible alien pursuant to Title 8, U.S.C. § 1182. The United States has indicated that it has no
8 present intention of seeking the return of the defendant to the United States for any additional
9 proceedings in this case.
10

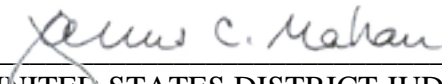
11 Defendant Kuang cannot be present at the re-sentencing hearing in this matter, and she has
12 not effectively and voluntarily waived her presence at the sentencing hearing. Defendant Kuang
13 cannot therefore be sentenced *in absentia*. There is very little likelihood that the defendant will ever
14 again be physically present in the United States. The Government has informed the Court that the
15 defendant is currently in custody in China, awaiting prosecution for crimes she allegedly committed
16 in China. Defense counsel states that he has had no contact with his client since her deportation in
17 2015. The United States has declined to seek a waiver of her physical presence in the United States
18 for the purposes of the sentencing hearing.
19

20 Accordingly,

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Government's request
22 that the restitution claim against defendant Wan Fan Kuang (ECF 937) be dismissed without
23 prejudice is GRANTED.
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1 IT IS FURTHER ORDERED that counsel for defendant Wan Fan Kuang is excused from
2 appearance at the sentencing hearing in this matter currently scheduled for August 14, 2017.

3 DATED August 28, 2017.

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UNITED STATES DISTRICT JUDGE
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